

Appl. No. 10/775,434  
Request for reconsideration  
March 28, 2006

### **REMARKS**

Claims 1-30 remain pending in this application. The Applicants wish to thank the Examiner and his Primary Examiner for their courtesy during an in person interview held on February 8, 2006, for the Examiner's efforts in review of this application and to express appreciation for the timeliness of the Official Office Action dated December 28, 2005. The context of the personal interview is memorialized herein.

As generally discussed during the personal interview, the Applicants respectfully submit that the MPEP is quite clear as to interpretation of functional language in a claim limitation. The MPEP states:

In order for a claim to be anticipated under 35 U.S.C. §102, however, each and every element as set forth in the claim must be found in a single prior art reference. M.P.E.P. § 2131 (emphasis added).

Furthermore, functional language in an apparatus claim requires that the anticipatory reference possess the capability of performing the recited function. *R.A.C.C. Industries Inc. v. Stun-Tech Inc.*, 49 USPQ2d 1793 (Fed. Cir. 1998) ("[I]n *Intel Corp. v. U.S. International Trade Commission*, 948 [sic, 946] F.2d 821, 832, 20 USPQ2d 1161, 1171 (Fed. Cir. 1991), this court interpreted functional language in an apparatus claim as requiring that an accused apparatus possess the capability of performing the recited function.").

"A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." MPEP 2173.05(g).

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Therefore, the Applicants respectfully submit that with regard to claim rejections of the Official Office Action which rely upon 35 U.S.C. §102 that each and every element of the claim, including each and every functional limitation, must be contained within a single reference.

Turning to paragraph 3 of the Official Office Action, the Examiner has rejected claim 18 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,704,740, to McKee et al. (previously U.S. Patent 5,645,337, to Gleckman was relied upon by the Examiner). The Applicants respectfully submit that the diffuser of McKee et al., previously Gleckman which was previously stated to be similar to other known diffusers utilized in conjunction with liquid crystal displays, randomly diffuses the associated light. Therefore, the Applicants submit that McKee et al. (previously Gleckman) does not teach, suggest or imply an information display, comprising: a diffuser positioned between a backlit liquid crystal display and backlighting associated with said liquid crystal display, wherein said diffuser redirects light rays emitted by said backlighting as a function of at least one of the following; the position of said liquid crystal display relative to at least one anticipated viewer and a planar surface of said diffuser relative to a viewing angle of at least one anticipated viewer as recited in claim 18 of the current application. Therefore, the Applicants submit that claim 18 is in condition for allowance over the art of record.

As a matter of further distinction, McKee et al. discusses frequently throughout the specification (specifically, column 3, lines 49-53) that "as the light travels through the

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diffuser 60, it is scattered.....". Once again, similar to known diffusers utilized in conjunction with liquid crystal displays that randomly diffuse the associated light. Quite distinguishable from the invention claimed in claim 18.

As generally discussed during the personal interview, the Applicants respectfully submit that the MPEP is quite clear as to the Examiner's burden of establishing a *prima facie* case of obviousness under 35 U.S.C. §103. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

MPEP §2143.01 provides further guidance as to what is necessary in showing that there was motivation known in the prior art to modify a reference teaching.

Specifically, MPEP §2143.01 states:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made,' because the references relied upon

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teach all aspects of the claimed invention were individually known in the prior art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

The Applicant notes that the Examiner has not provided any rationale as to why one skilled in the art would have considered utilizing a negative mode LCD or a display driver with more outputs than required by the given LCD (for examples), let alone any rationale as to why one skilled in the art would have found such modifications to the prior art to have been desirable. Furthermore, the Examiner has not provided any evidence of the suitability of such structures for these purposes.

As noted above with respect to MPEP §2143.01, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. Merely because Tonar et al., Weller et al. and May are directed to displays, as stated by the Examiner in throughout the Office Action, does not suggest the *desirability* of designing a display as recited in the pending claims. For this reason, a *prima facie* case of obviousness has not been established. Moreover, the Examiner's rationale clearly suggests the use of impermissible hindsight in his analysis. As set forth in *In re Antle*, 170 USPQ 285 (CCPA 1971), the CCPA stated the following regarding the issue of analogous art:

The very point in issue is whether one of ordinary skill in the art would have *selected*, without the advantage of hindsight and knowledge of the applicant's disclosure, the particular references which the examiner applied. *Id.* at 287. [Emphasis in original]

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It is Applicant's contention that without the advantage of hindsight and knowledge of their disclosure, one of ordinary skill in the art would not have selected the Tonar et al., Weller et al. or May references, singularly or in combination, to arrive at an apparatus comprising an information display as taught in the current application.

As discussed throughout various portions of the specification of the present application it is desirable to provide improved information displays and apparatus including those displays. The Applicants restate the following to specifically address the rejections put forward by the Examiner and rely on the statements above as specifically pointing out how the language of the claims patentably distinguishes them from the references.

Turning now to paragraph 5, the Examiner has rejected claims 1-17 and 22-30 under 35 U.S.C. §103(a) as being anticipated by U.S. Patent Application Number 2005/0007645 A1, to Tonar et al. in view of U.S. Patent Application Number 2004/0032675, to Weller et al. With regard to claim 1, the Examiner has pointed to page 21, paragraph 184, 185 and elsewhere of Tonar et al. and various passages of Weller et al. as being of particular relevance. As discussed during the personal interview each of these recitations are discussing LED based indicia displays, not backlit LCD displays; the two types of displays are quite distinct from one another. Therefore, the Applicants respectfully submit that Tonar et al. or Weller et al., taken individually or in combination, do not teach, suggest or imply a rearview mirror assembly, comprising: an information display at least partially positioned behind a reflective element with respect to an

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anticipated viewer; said information display comprising a negative mode, backlit, liquid crystal display having at least two characters, each of said characters has individual backlighting associated therewith, wherein said backlighting of a given character is controllable independent of backlighting of any other character as recited in claim 1 of the present application. Since claims 2-8 depend from claim 1 the Applicants submit that claims 1-8 are in condition for allowance over the art of record.

With regard to claim 9, the Examiner has pointed to page 21, paragraphs 184 and 185, page 25, paragraph 206, lines 9-13, page 29, paragraph 239, lines 3-8 and page 30, paragraph 249, lines 5-6 and paragraph 253, lines 4-5 of Tonar et al. along with various passages from Weller et al. as being of particular relevance. As discussed during the personal interview, the Applicants respectfully submit that known liquid crystal displays do not incorporate display drivers having spare outputs that are utilized to control associated backlighting. The backlighting is turned on collectively, independent of the liquid crystal display characters via means other than the display driver. Therefore, the Applicants respectfully submit that Tonar et al. or Weller et al., taken individually or collectively, do not teach, suggest or imply an information display, comprising: a liquid crystal display having at least two characters with each character having associated backlighting; and a display driver having more outputs than said liquid crystal display has characters, wherein at least one output of said display driver is used to control said backlighting as recited in claim 9 of the current application.

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Furthermore, in that claims 10-11 depend from claim 9, the Applicants submit that claims 9-11 are in condition for allowance over the art of record.

With regard to claim 12, the Applicants submit that Tonar et al. or Weller et al., taken individually or collectively, do not teach, suggest or imply a rearview mirror assembly, comprising: a backlit liquid crystal display positioned behind an automatically dimming reflective element, wherein the intensity of said backlit liquid crystal display is a function of the reflectivity of said automatically dimming reflective element, said liquid crystal display having at least two characters, each of said characters has individual backlighting associated therewith, wherein said backlighting of a given character is controllable independent of backlighting of any other character as now recited.

Furthermore, in that claims 13-17 depend from claim 12, the Applicants submit that claims 12-17 are in condition for allowance over the art of record.

With regard to claim 22, the Applicants submit that Tonar et al. or Weller et al., taken individually or collectively, do not teach, suggest or imply a rearview mirror assembly, comprising: an information display and a reflective element, wherein said reflective element is at least partially transmissive and an optimum light ray wavelength transmission of said reflective element is substantially equal to the predominant wavelength of light rays emitted by said information display, said information display is a liquid crystal display having at least two characters, each of said characters has individual backlighting associated therewith, wherein said backlighting of a given character is controllable independent of backlighting of any other character as now

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recited. Furthermore, in that claims 23 and 24 depend from claim 22, the Applicants submit that claims 22-24 are in condition for allowance over the art of record.

With regard to claim 25, the Applicants submit that Tonar et al. or Weller et al., taken individually or collectively, do not teach, suggest or imply a rearview mirror assembly, comprising: a backlit liquid crystal display positioned behind an automatically dimming reflective element, wherein the intensity of said backlit liquid crystal display is a function of an ambient light sensor, said liquid crystal display having at least two characters, each of said characters has individual backlighting associated therewith, wherein said backlighting of a given character is controllable independent of backlighting of any other character as now recited. Furthermore, in that claim 26 depends from claim 25, the Applicants submit that claims 25 and 26 are in condition for allowance over the art of record.

With regard to claim 27, the Applicants submit that Tonar et al. or Weller et al., taken individually or collectively, do not teach, suggest or imply a rearview mirror assembly, comprising: a backlit liquid crystal display positioned behind an automatically dimming reflective element, wherein the intensity of said backlit liquid crystal display is a function of an glare light sensor, said liquid crystal display having at least two characters, each of said characters has individual backlighting associated therewith, wherein said backlighting of a given character is controllable independent of backlighting of any other character as now recited. Therefore, the Applicants submit that claim 27 is in condition for allowance over the art of record.



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With regard to claim 28, the Applicants submit that Tonar et al. or Weller et al., taken individually or collectively, do not teach, suggest or imply a rearview mirror assembly, comprising: a backlit liquid crystal display positioned behind an automatically dimming reflective element, wherein the contrast of said backlit liquid crystal display is a function of an ambient light sensor, said liquid crystal display having at least two characters, each of said characters has individual backlighting associated therewith, wherein said backlighting of a given character is controllable independent of backlighting of any other character as now recited. Furthermore, in that claim 29 depends from claim 28, the Applicants submit that claims 28 and 29 are in condition for allowance over the art of record.

With regard to claim 30, the Applicants submit that Tonar et al. or Weller et al., taken individually or collectively, do not teach, suggest or imply a rearview mirror assembly, comprising: a backlit liquid crystal display positioned behind an automatically dimming reflective element, wherein the contrast of said backlit liquid crystal display is a function of an glare light sensor, said liquid crystal display having at least two characters, each of said characters has individual backlighting associated therewith, wherein said backlighting of a given character is controllable independent of backlighting of any other character as now recited. Therefore, the Applicants submit that claim 30 is in condition for allowance over the art of record.

Turning to paragraph 6, the Examiner has rejected claims 19-21 under 35 U.S.C. §103(a) as being unpatentable over Tonar et al. in view of Weller et al. and U.S. Patent

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6,614,419, to May. For at least the reasons expressed above and as discussed during the personal interview, the Applicants respectfully submit that neither Tonar et al., Weller et al. or May, taken individually or collectively, teach, suggest or imply a rearview mirror assembly, comprising: an information display at least partially positioned behind a reflective element with respect to an anticipated viewer; said information display comprising a negative mode, backlit, liquid crystal display having at least two characters, each of said characters has individual backlighting associated therewith, wherein said backlighting of a given character is controllable independent of backlighting of any other character; a display driver having more outputs than said liquid crystal display has characters, wherein at least one output of said display driver is used to control said backlighting; and a diffuser positioned between a backlit liquid crystal display and backlighting associated with said liquid crystal display, wherein said diffuser redirects light rays emitted by said backlighting as a function of at least one of the following; the position of said liquid crystal display relative to at least one anticipated viewer and a planar surface of said diffuser relative to a viewing angle of at least one anticipated viewer; wherein said reflective element is automatically dimming and the intensity of said backlit liquid crystal display is a function of the reflectivity of said automatically dimming reflective element; and wherein said reflective element is at least partially transmissive and an optimum light ray wavelength transmission of said reflective element is substantially equal to the predominant wavelength of light rays emitted from said information display. as recited in claim 18 of the current application.

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Furthermore, in that claims 20 and 21 depend from claim 19, the Applicants submit that claims 19-21 are in condition for allowance over the art of record.

The Applicants submit that claims 1-30 are in condition for allowance and that no new subject matter is introduced via this paper. The Applicants, therefore, respectfully request that a timely Notice of Allowance be issued in this case. Please contact the undersigned should additional information be required.

Respectfully submitted,  
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By: Gentex Corporation

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